

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Mark Ryan,
Plaintiff,

v.

Civil Action No. 1:09-CV-147

Andrew Pallito, Delores
Burroughs-Biron, Greg
Hale, Dr. Moore, Roy
Catella, John/Jane Doe,
Defendants.

REPORT AND RECOMMENDATION

(Doc. 6 and 7)

Plaintiff Mark Ryan, a Vermont inmate proceeding *pro se*, has filed a motion to voluntarily dismiss this case. Because no answers or motions for summary judgment have been filed by the defendants, dismissal is proper pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). Indeed, dismissal may be accomplished by notice, and leave of Court is not required. Fed. R. Civ. P. 41(a)(1)(A)(i). As dictated by Fed. R. Civ. P. 41(a)(1)(B), dismissal is without prejudice.

Ryan also requests that the Court rescind the order granting him *in forma pauperis* status so that filing fees will no longer be deducted from his prison trust account.

Pursuant to the Prison Litigation Reform Act, however, a prisoner “shall be required to pay the full amount of the filing fee” regardless of whether the case is dismissed or denied after filing. 28 U.S.C. § 1915(b)(1); *Goins v. Decaro*, 241 F.3d 260, 261(2d Cir. 2001); *Huffman v. Benson*, 2006 WL 625844, at *2 (W.D.N.Y. March 9, 2006). This rule

applies both to fees that have already been paid and to indebtedness for future installments. *Goins*, 241 F.3d at 261-62. Accordingly, the Court is “constrained to direct the Clerk to collect the full filing fee from the Plaintiff.” *Thorpe v. Snyder County Domestic Relations Section*, 2005 WL 1155011, at *1 (M.D. Pa. Apr. 29, 2005); *see Richardson v. Sec’y, Dep’t of Corr.*, 2007 WL 951788, at *1 (N.D. Fla. March 28, 2007).

I thus recommend that the Court DISMISS this case without prejudice, and to the extent that a ruling is required on Ryan’s motion to dismiss (Doc. 6), that the motion be GRANTED. Ryan’s request for rescission of the order granting him *in forma pauperis* status (Doc. 7) is DENIED.

Dated at Burlington, in the District of Vermont, this 6th day of October, 2009.

/s/John M. Conroy
John M. Conroy
United States Magistrate Judge

Any party may object to this Report and Recommendation within 10 days after service by filing with the clerk of the court and serving on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Failure to file objections within the specified time waives the right to appeal the District Court's order. See Local Rule 72.1, 72.3 & 73.1; 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), 6(a) and 6(e).